STATE OF MICHIGAN

COURT OF APPEALS

BEN-TECH INDUSTRIAL AUTOMATION, ALI KAAFARANI, ANGELO VINCH, JOE BINGHAM, GARY PETERS, BRIAN GAZDICK and FRAN LIVINGSTON,

Plaintiffs-Appellants,

v

OAKLAND UNIVERSITY and DONALD O. MAYER,

Defendants-Cross-Defendants/ Appellees,

and

ERIC KACZOR,

Defendant-Cross Plaintiff.

UNPUBLISHED
January 11, 2005

No. 247471
Oakland Circuit Court
LC No. 02-040847-CZ

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order granting summary disposition to defendant Donald O. Mayer (Mayer)[1] of plaintiffs' defamation claim under MCR 2.116(C)(8), and their injurious falsehood claim under MCR 2.116(C)(10). We reverse.

I

Defendant Mayer is a professor of Business Law at Oakland University (OU), and a lawyer (J.D., Duke University 1973, LLM, Georgetown University). Mayer teaches a graduate-

[1] Mayer is the only appellee. The parties stipulated to dismiss OU without prejudice, the circuit court's order of dismissal stating that it appeared that the Court of Claims had exclusive jurisdiction. Kaczor was dismissed by stipulation, with prejudice.

level course at OU called the Legal Environment of Business (MGT 550), which covers basic defamation law.

Former defendant Eric Kaczor (Kaczor) was an OU student enrolled in Mayer's MGT 550 course in the fall of 1999. Mayer assigned students (in groups) to write a paper analyzing a business experience from an ethical perspective. The students in Kaczor's group agreed to analyze a factual scenario of Kaczor's.

In January of 2002, defendant Mayer posted Kaczor's paper (entitled "Ethics Paper") on Mayer's OU website, as an example for other students. Defendant Mayer deleted the student-authors' names before posting it, but did not redact or edit the paper. Kaczor's paper discussed his real-life employment experiences with plaintiff Ben-Tech (which is in the business of designing and marketing automation systems to industrial clientele) and the individual plaintiffs (all Ben-Tech employees), and used the actual names of corporations involved (plaintiff Ben-Tech and Siemens ElectroCom) and the individual plaintiffs--all Ben-Tech employees. Kaczor did not name himself in the paper, using the pseudonym "John."[2]

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[2] Kazcor's Ethics Paper stated in part:

> From January 1995 through May 1998, John worked for Siemens ElectroCom. . . . John's positions at ElectroCom included Project Manager and Project Engineer on various assignments dedicated to the automotive industry. . . .
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> In April 1998, Ali Kaafarani, John's direct supervisor, approached John and told him of a new company starting up in Michigan. He explained that the company, Ben-Tech, would be a competitor of Siemens ElectroCom. He also stated that he, along with Angelo Vinch, Vice President of Siemens ElectroCom, Joe Bingham, Computer Programmer for Siemens ElectroCom, Gary Peters, Project Manager for Siemens ElectroCom, and Brian Gazdick, Salesman for Siemens ElectroCom, were all directly involved in starting up the new company. . . . Ali offered John a salary which was 20% higher than what he earned at Siemens ElectroCom, and included profit sharing bonuses every six months.
>
> At the time of the business proposition, John was involved in two projects. One project was for Ford Windsor Aluminum. John had been working on this project for about a year now, and was about four months away from completion . . . [and] was the only person working . . . on this project. The other project was Siemens Automotive. This project lagged, and was far from completion. Joe Bingham was also involved in the Siemens Automotive project. Since these two projects were automotive related and therefore considered secondary to Siemens ElectroCom's emerging focus on the United States Postal Service, Ali told John that they would be taken to Ben-Tech. He said that the projects would serve as a basis on which to grow the new company. He added that if John decided to go to Ben-Tech, John would retain ownership of the projects. John knew that taking

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Google, a search engine, picked up Kaczor's Ethics Paper from Mayer's OU website. In March 2002, plaintiff Ben-Tech contacted OU, requesting removal of the paper from its website. OU complied, but refused to issue a retraction.

Plaintiffs filed a two-count complaint against Mayer, OU, and Eric Kaczor, alleging defamation and injurious falsehood resulting from Mayer's publication of Kaczor's Ethics Paper on the internet on OU's website in early 2002. Plaintiffs' complaint alleged in pertinent part:

> 15. The Ethics Paper accused the Plaintiffs of committing criminal acts, spoliation of evidence and engaging in unethical business practices while manipulating the Court system to free themselves of "charges" that were brought against them.
>
> * * *
>
> 17. The statements in the Ethics Paper were false and defamatory, unprivileged, communicated to a third party, and were published with actual malice and/or a reckless disregard for the truth.
>
> * * *
>
> 20. The false and defamatory statements were accessible to the general public worldwide through an ordinary Internet search conducted in March of 2002 using key words "Ben-Tech."
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> * * *
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> 26. Defendants, by the above conduct, negligently, or with actual malice published false and defamatory statements regarding Plaintiffs to the general public on a worldwide basis via the Internet.

(…continued)

> the projects also meant taking all relevant materials such as software and documentation. Since he had previously signed a non-disclosure agreement with Siemens ElectroCom, this did not seem right to him. Ali, however, said that all the internal politics of giving the jobs to Ben-Tech would be taken care of by Angelo (VP) without Siemens ElectroCom ever finding out.
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> * * *
>
> John decided to accept the Ben-Tech offer. . . . Siemens was oblivious to the changes . . . Two months later, John accepted a different offer of employment at Siemens. . . . Soon after he left Ben-Tech, Siemens ElectroCom learned of BenTech's practices. They immediately pressed charges and filed for a lawsuit. . . . Siemens ElectroCom conducted a search at the Ben-tech facility and found nothing. It seemed that Ben-tech had destroyed all relevant materials. Because of the lack of evidence, all charges were dropped soon thereafter.

> 27. The defamatory statements have a tendency to, and did, prejudice Plaintiffs in the conduct of their business and deter others from dealing with Plaintiffs.
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> 28. The defamatory statements made by Defendants were injurious to Plaintiffs in their business and falsely and expressly accused Plaintiffs of the commission of a criminal act, and therefore constitute defamation per se.

Plaintiffs' injurious falsehood count alleged:

> 34. Defendants intended these statements to result in harm to the interests of Plaintiffs, which have a pecuniary value.
>
> 35. Defendants recognized, or should have recognized, that the statements were likely to harm the interests of Plaintiffs which have a pecuniary value.
>
> 36. Defendants made these statements knowing that they were false, or in reckless disregard of their truth or falsity.

A

Before discovery closed, defendant Mayer filed a motion for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10). Mayer argued that plaintiffs failed to state a defamation claim because they did not specifically plead the defamatory words used or specific individuals to whom publication was made.

The circuit court dismissed the defamation claim, finding that the complaint failed to identify "someone to whom the defamatory statements were published . . . [and] specific words which the plaintiffs claim were defamatory." The Court went on to say that "[a]lthough the failure to identify the specific defamatory words could be cured through amendment, the plaintiffs have not identified any individual to whom the defamation was published. The plaintiffs may not allege defamation in general and fill in the blanks through discovery."

II

Plaintiffs first assert that the circuit court erred in concluding that Ben-Tech did not satisfy the publication element by alleging mass media internet publication. Alternatively, plaintiffs assert that the court erred by granting summary disposition while discovery remained open and in denying Ben-Tech the opportunity to obtain a hit log from Oakland University and thereby identify persons who received the defamatory statements.

This Court reviews the circuit court's grant of summary disposition de novo. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions which can be drawn from the facts, and construed in the light most favorable to the nonmoving party. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). However, a mere statement of a pleader's conclusions, unsupported by allegations of fact, will

not suffice to state a cause of action. *Churella v Pioneer State Mutual Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Adair, supra*.

A - Defamation

"A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 251; 487 NW2d 205 (1992), quoting 3 Restatement Torts, 2d, § 559, p 156. A cause of action for libel has four components: "(1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication." *Rouch, supra* at 251, quoting *Locricchio v Evening News Ass'n*, 438 Mich 84, 115-116; 476 NW2d 112 (1991).

B

Defendant is incorrect that plaintiffs failed to plead defamation with specificity and thus waived any challenge to the dismissal of their defamation claim. Plaintiffs argued this issue in response to defendant's motion, and on appeal.

We conclude that the circuit court erred in ruling that plaintiffs' allegations of internet publication to the world failed to meet the requirement that the publication element of defamation be pleaded with specificity. The cases the circuit court relied on, *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 77; 480 NW2d 297 (1991), and *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583; 349 NW2d 529 (1984), reiterate the well-established proposition that libel must be specifically pleaded (including the publication of the alleged defamatory words). However, neither *Gonyea* nor *Ledl* involved publication in the mass media.[3] Although no Michigan case has addressed internet publication in the defamation context, implicit in several Michigan cases is that a defamation complaint need not identify specific individuals/readers to whom the allegedly defamatory statements were published where a specified **mass media** source is the vehicle of publication [emphasis added]. See *Locricchio, supra* at 84 (series of articles in newspaper); *Rouch, supra* (newspaper article).[4]

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[3] *Hernden v Consumers Power Co*, 72 Mich App 349, 356; 249 NW2d 419 (1976), held that a libel plaintiff fails to state a claim where he does not allege where, when, or to whom the statement was published, or that there was a publication to anyone other than plaintiff himself. *Wynn v Cole*, 68 Mich App 706, 713; 243 NW2d 923 (1976), held that a libel complaint must include the libelous statement and must also show where the alleged libel was published.

[4] Michigan courts have not specifically addressed whether publication via the internet suffices to meet the publication element, but other courts have, and have answered in the affirmative. See e.g., *Bochan v La Fontaine*, 68 F Supp 2d 692 (ED VA, 1999), and *Firth v New York*, 184 Misc

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In the instant case, plaintiffs' complaint alleged that Kaczor's paper was published on the internet "to the general public on a worldwide basis" from Mayer's OU website.[5] Plaintiffs therefore identified a third party to whom the statements were published, *Locricchio*, *supra*, and thus satisfied the requirement that the publication element be specifically pleaded. The circuit court's dismissal of the defamation claim on the basis that "the plaintiffs have not identified any individual to whom the defamation was published," was error. Further, discovery remained open. It is undisputed that OU had not responded to plaintiffs' subpoena of its "hit log" at the time the motion was granted. The "hit log" would identify individuals who accessed Kaczor's paper on the OU website by numeric identifiers that could be matched to names of individual internet users through records of the Internet Service Providers (ISPs). We conclude that dismissal of the defamation claim under MCR 2.116(C)(8) was error.

B

Defendant Mayer's summary disposition motion also argued that governmental immunity shielded him from both plaintiffs' claims. The circuit court's opinion "briefly addressed the issue," noting that should dismissal of plaintiff's defamation claim under MCR 2.116(C)(8) be appealed, this Court could affirm on the alternative basis of governmental immunity under MCR 2.116(C)(7). The court opined that defendant was not grossly negligent and thus was entitled to immunity.[6]

"MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties."

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2d 105; 706 NYS 2d 835 (NY, 2000), aff'd 98 NY2d 365; 775 NE2d 463 (2002).

[5] It is undisputed that Google, a widely-used search engine, picked up Kaczor's paper from Mayer's OU website for access on the worldwide web.

[6] The circuit court's opinion stated:

> In the event of an appeal, and for the benefit of the parties, the Court will briefly address the other issues. The defendant also argues that he is protected by governmental immunity because his conduct did not rise to the level of gross negligence. . . MCL 691.1407. The Court agrees. The defendant had no knowledge that the scenario described in the paper was not a hypothetical, but was an actual life experience of one of the students. Neither did he have any reason to suspect this.
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> The plaintiffs argue that since defamation is an intentional tort, it is not covered by governmental immunity. Defamation may be established on ordinary negligence where the person defamed is a private individual. *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 627 NW2d 5 (2001). If defamation were an intentional tort, that would merely provide further grounds for granting summary disposition. It is undisputed that the defendant did not intend to publish a statement, true or false, but only intended to publish a student paper containing a hypothetical scenario.

Glancy v Roseville, 457 Mich 580, 583; 577 NW2d 897 (1998), quoting *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). A motion under MCR 2.116(C)(7) should not be granted unless no factual development can provide a basis for recovery. *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 340; 568 NW2d 847 (1997).

Plaintiffs contend that Mayer is not shielded by governmental immunity because he committed an intentional tort—defamation.[7] We disagree.

There is no intentional tort exception where the tort was committed within the scope of a governmental function. *Smith v Dep't of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987). Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000).

Plaintiffs in the instant case do not contest that Mayer was acting within the scope of his authority, or that OU was engaged in the exercise or discharge of a governmental function.

Alternatively, plaintiffs contend that Mayer is not shielded by governmental immunity for conduct that is, at minimum, grossly negligent.

To be the proximate cause of an injury, the gross negligence must be "the one most immediate, efficient, and direct cause" preceding the injury. *Robinson, supra*. Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999). The gross negligence exception to governmental immunity applies to individuals but not to governmental agencies. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420-421; 540 NW2d 710 (1995), overruled on other grds in *American Transmissions, Inc v Att'y General*, 454 Mich 135, 141-143; 560 NW2d 50 (1997).

"Gross negligence" is defined under the immunity statute as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2).

In the instant case, plaintiffs' injurious falsehood count alleged that defendant "made these statements knowing that they were false, or in reckless disregard of their truth or falsity." The complaint, liberally read, thus alleged Mayer was grossly negligent. We conclude that plaintiffs presented evidence below such that reasonable minds could differ with regard to whether Mayer's conduct amounted to gross negligence, as that term is defined in the immunity

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[7] Plaintiffs maintained below that Mayer was not protected by governmental immunity for several reasons, including that in January 2002, Mayer was on a leave of absence from OU to teach at the University of Michigan. However, according to an affidavit of OU's Assistant Vice President for Academic Affairs, during the winter term of 2002, Mayer remained actively employed and on OU's payroll.

statute: "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2).

Mayer, a professor of Business Law and ethics at OU, is a lawyer of some thirty years, has an advanced degree (LLM), and teaches basic defamation law. In a graduate-level course entitled the Legal Environment of Business, Mayer assigned a paper discussing a business experience from an ethical perspective. Graduate courses in business draw students that tend to have had business experience in the real world, as did Kaczor. Mayer testified that he posted Kaczor's paper on the internet through his University website for other students **without reading the paper closely**. Mayer also testified at deposition that he recognized the name "Siemens" but not Ben-Tech, in Kaczor's paper. Mayer omitted the student-authors' names, but did not redact or omit the names of corporations and individuals named in the paper. Kaczor's paper described conduct by plaintiffs that was unethical and/or illegal. The paper stated, inter alia, that several of the individual plaintiffs, who became Ben-Tech employees, had encouraged him to leave Siemens, offered him a position at Ben-Tech, and suggested and/or presumed that John would bring materials from Siemens with him to Ben-Tech, and that no one would find out about it, in contravention of the nondisclosure agreement John had with Siemens.

Under these circumstances, we conclude that reasonable minds could differ regarding whether Mayer's almost complete lack of review of Kaczor's paper before posting it on the internet constituted gross negligence, given Mayer's education as a lawyer, his position as a professor of Business Law, and that he teaches defamation in the course at issue.

Further, we conclude that the defamation claim would not be properly dismissed on governmental immunity grounds.

II

Defendant Mayer's summary disposition motion also maintained that no genuine issue of fact existed as to the injurious falsehood claim. The circuit court agreed, its opinion stating:

> In this case, there is no evidence that the defendant intended to harm Ben-Tech or the individual plaintiffs. Since he was unaware that they were actual persons, there is no reason why he should have recognized that they might be harmed by the publication of the paper.
>
> Moreover, the requirement of knowledge of falsity or reckless disregard is the same as that required to sustain a defamation action. *Ireland v Edwards*, 230 Mich App 607, 615; 584 NW2d 632 (1998); *New Franklin Enterprises v Sabo*, 192 Mich App 219, 221; 480 NW2d 326 (1991). Reckless disregard occurs when the publisher, in fact, entertained serious doubts regarding the truth of the statements published. *Faxon v Michigan Republican State Central Committee*, 244 Mich App 468, 474; 624 NW2d 509 (2001). In this case, the defendant never intended to publish factual information that could be regarded as true or false, but merely intended to publish a student paper containing a hypothetical business case. In this regard, it is undisputed that he never entertained serious doubts regarding the truth of the statements. Summary disposition will be granted pursuant to MCR 2.116(C)(10) as to the injurious falsehood claim.

Plaintiffs argue that the circuit court misapplied and misconstrued the law of injurious falsehood and ignored critical facts regarding Mayer's knowledge and experience when it held that there was no evidence to support a claim for injurious falsehood. We agree that summary disposition was improperly granted.

This Court reviews a grant of summary disposition de novo. A motion for summary disposition under MCR 2.116(C)(10) must be supported by documentary evidence. MCR 2.116(G)(3)(b), *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). The moving party must specifically identify the matters which have no disputed factual issues, MCR 2.116(G)(4), *Maiden, supra* at 120, and has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence, *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists, *Smith, supra; Glass v Goeckel*, 262 Mich App 29, 33; 683 NW2d 719, lv gtd 471 Mich 904 (2004).

Injurious falsehood is discussed in *Kollenberg v Ramirez*, 127 Mich App 345, 352; 339 NW2d 176 (1983), quoting 3 Restatement Torts, 2d, § 623A, p 334:

> One who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if
>
> (a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and
>
> (b) he knows that the statement is false or acts in reckless disregard of its truth or falsity.

For the reasons stated above in the discussion of governmental immunity and other reasons, we conclude that this claim was improperly dismissed. First, discovery remained open. Second, reasonable minds could differ whether Mayer *should have recognized* that his actions were likely to harm Ben-Tech. In addition, the cases the circuit court relied on, *Ireland, New Franklin*, and *Faxon, supra*, although defamation cases, are not apposite because they involved a constitutional analysis and public or limited purpose public figures, and the application of the "actual malice" standard of proof required to protect First Amendment rights. See *New York Times, Co v Sullivan*, 376 US 254; 84 S Ct 710; 11 L Ed 2d 686 (1964).[8]

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[8] *New York Times, supra*, held that absent actual malice, private citizen critics of public officials are protected even if their statements are false and defamatory, i.e., negligent misstatement is protected. Purely public plaintiffs must prove "actual malice," i.e., that the defendant's defamatory statement was published with knowledge that it was false or with reckless disregard of whether it was false or not. The *New York Times* actual malice standard is codified in Michigan at MCL 600.2911(6).

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The requirement of showing that Mayer "in fact, entertained serious doubts regarding the truth of the statements published," does not apply in the instant case. That requirement applies to cases in which a public figure or limited purpose public figure plaintiff has the burden of showing publication with actual malice. The actual malice standard does not apply here, the negligence standard does.[9] While that negligence standard is elevated to a gross negligence standard based on governmental immunity, the statutory definition of gross negligence controls -- "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." That standard does not require that Mayer in fact entertained serious doubts regarding the truth of the statements published. The circuit court erred in applying this standard, and in dismissing the injurious falsehood claim on this basis.

III

Finally, plaintiffs argue that words charging the commission of a crime are defamatory per se, and injury to the reputation of the person defamed is presumed, such that dismissal is not proper on the basis that damages were not proven. Plaintiffs note that discovery remained open when the circuit court dismissed plaintiffs' claims, and OU had not answered plaintiffs' subpoena for its "hit log," which would provide the identities of some of the persons who accessed Kaczor's paper.

The circuit court's opinion stated in part:

> In the event of an appeal, and for the benefit of the parties, the Court will briefly address the other issues. . . .
>
> * * *
>
> The defendant also argues that the plaintiffs have no evidence that the defamation was the cause of any damages. The plaintiffs argue that discovery is incomplete in this regard. The Court would observe that the plaintiffs need not conduct discovery to determine whether they have been damaged by a defamation. If the

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In addition to satisfying Michigan's common-law requirements for a libel cause of action [(1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication], a litigant must comply with constitutional requirements. As we recognized in *Locricchio,* analysis under the constitution has focused on three elements: "the public- or private-figure status of the plaintiff, the media or nonmedia status of the defendant, and the public or private character of the speech." *Id.* at 118.

[9] Rather, a negligence standard applies in libel cases involving a private plaintiff, a non-media defendant, and alleged defamatory statements regarding a private matter. The private plaintiff must establish negligence on the part of the non-media defendant in publication of the defamatory statements. MCL 600.2911(7).

plaintiffs had any factual basis for the allegation when the complaint was filed, that would be sufficient to avoid summary disposition on this point.

The common law did not require plaintiffs to prove special harm to their reputation where defamation per se was involved. Rather, damages were presumed. See *Sias v General Motors Corp*, 372 Mich 542, 551-552; 127 NW2d 357 (1964). Subsequently, the Legislature limited the damages that a private individual could recover for defamation to "economic damages including attorney fees." MCL 600.2911(7). However, this Court in *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 727-729; 613 NW2d 378 (2000), held that the damage limitations of MCL 600.2911(7) do not apply to cases of defamation per se involving imputation of a lack of chastity or the commission of a crime. The *Burden* Court held: "where a plaintiff brings an action alleging words imputing lack of chastity or commission of a crime . . . the inability to prove damages is not fatal to the claim." *Id.* at 729.

We conclude that Kaczor's paper, at minimum, strongly suggested, and more realistically, stated, that plaintiffs committed crimes by encouraging Kaczor to leave Siemens and bring with him proprietary information belonging to Siemens, in violation of a nondisclosure agreement, and by expressly stating that when Siemens learned of "Ben-Tech's practices," Siemens filed "charges." Further, the paper states that after Siemens pressed charges and filed suit, Siemens "conducted a search at the Ben-tech facility and found nothing. It seemed that Ben-tech had destroyed all relevant materials." In addition, for reasons discussed above, the circuit court's assumption that additional discovery could not aid plaintiffs in establishing damages is incorrect. OU had not provided plaintiffs with its hit log as of the date the court dismissed plaintiffs' claims. Plaintiffs thus did not know the extent of the publication on the internet via OU's website.

We reverse the dismissal of the defamation claim under MCR 2.116(C)(8), and the dismissal of the injurious falsehood claim under MCR 2.116(C)(10). We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot